

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 540 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MOHANLALRAICHANDJI BISNOI

Versus

STATE OF GUJARAT

Appearance:

MR MJ BUDDHBHATTI for Petitioner
MR. YF MEHTA, APP for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 13/01/97

ORAL JUDGEMENT: (Per Gokhale, J.)

1. This is an appeal against the judgment of the learned City Sessions Judge, Ahmedabad (Court No.22), in Sessions Case No.144 of 1989, decided on 25th August, 1989. The appellant herein was charge sheeted for being found in possession of opium of the quantity of 5.225

kgs. He was accosted on 23rd February, 1989 at about 9.45 A.M. near Gitamandir S.T. Bus Stand, Ahmedabad. He was subsequently arrested for breach of Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act" for short). After the necessary trial, he was convicted and sentenced for 10 years R.I. and fine of Rs.1 lakh, and in default, R.I. for two years. No separate sentence was passed under Section 66-A of the Bombay Police Act, which was also invoked against the accused.

2. In this appeal, Mr. Budhbhatti, learned Advocate appearing for the appellant has drawn our attention to the deposition of Hirabhai G. Damor, the P.S.I., who investigated the matter. In his deposition, which is recorded at Ex.88, page 95, he has admitted that, after the appellant was accosted and when the Panchnama was drawn, he did not send him to any Gazetted Officer which is a necessary requisite under Section 50 of the NDPS Act. Mr. Budhbhatti relies upon the observations of the Supreme Court in paragraph 26 of its judgment in the case of State of Punjab v. Balbir Singh, reported in AIR 1994 SC 1872. Therein the Supreme Court has laid down that while acting under the Act, the officer has to comply with the provisions of Section 50 and the persons has to be informed that if he so requires, he shall be produced before the Gazetted Officer. It is an obligatory responsibility of the Police Officer to inform the person to be searched. Inasmuch as the provision is not followed, the conviction stands vitiated.

3. Accordingly, this appeal is allowed and the appellant-accused is ordered to be set at liberty forthwith, if not required for any other purpose. Fine, if any paid, will be refunded.

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